13

FILED
NOV 7 - 2007
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 07-314

IN THE

Supreme Court of the United States

STACY ANN PATTERSON,

Petitioner,

v.

INSPECTOR GENERAL PA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT

PETITION FOR REHEARING

STACY ANN PATTERSON
408 South Enola Drive
Enola, PA 17025
(717) 732-1706
Petitioner Pro Se

Wright Appellate Services 0814
(215) 733-9870 • (800) 507-9020 • Fax (215) 733-9872

TABLE OF CONTENTS

Table of Contents i

Table of Authorities ii

Petition for Rehearing 1

Argument in Support of Petition for Rehearing 2

A. The Petitioner Has Alleged An Intervening Circumstances Of A Substantial Or Controlling Effect 2

B. The Petitioner's Writ of Certiorari Must Be Granted For Or to "Other Substantial Grounds Not Previously Presented" 5

Conclusion 10

Certificate of Petitioner 11

TABLE OF AUTHORITIES

Cases:

Bakery & Pastry Drivers & Helpers Local 802 v. Wohl, 315 U.S. 769, 773 (1942) 3

Barrera-Leyva v. INS, 653 F.3d 379, 380 (9th Cir. 1981) 4

Brandenburg v. Ohio, 395 U.S. 444, 449, 89 S.Ct. 1827, 23 L.Ed.2d 430 (1969) 8

Campbell v. Town of Southern Pines, 2005 U.S. Dist. LEXIS 38488, *27 n..6 (M.D.N.C. 2005) 5

Connick v. Myers, 461 U.S. 138 (1983) 6, 7

Davis v. Roadway Express, Inc., 621 F.2d 775, 776 (5th Cir. 1980) 4

Flynn v. United States, 75 S.Ct. 285, 286 (1955) 3

Keyishian v. Board of Regents, 385 U.S. 589 (1967) 6

Morse v. Frederick, 127 S.Ct. 2618, 168 L.Ed. 2d 290 (2007) 8

Oleyear v. County of Durham, 336 F.Supp.2d 512, 517-18 (M.D.N.C. 2004) 4

Perry v. Sinderman, 408 U.S. 593 (1972) 6

Pickering v. Board of Education, 391 U.S. 563 (1968) 6

Rankin v. McPherson, 483 U.S. 378, 388-392 (1987) 7

Rosenberger v. Rector and Visitors of Univ. of Va., 515 U.S. 819, 828-829, 115 S.Ct. 2510, 132 L.Ed.2d 700 (1995) 8

Rumsey Indian Rancheria of Wintun Indians v. Wilson, 99 F.3d 321, 322 (9th Cir. 1996) 8

Tinker v. Des Moines Independent Community School District, 393 U.S. 503, 524, 89 S.Ct. 733, 21 L.Ed. 2d 731 (1969) 7, 8

United States v. Ohio Power Co., 351 U.S. 980 (1956) 3

Vail Mfg. Co. v. NLRB, 68 S.Ct. 32 (1947) 3

Wallace v. SMC Pneumatics, Inc., 103 F.3d 1394, 1400 (7th Cir. 1997) 4

Watters v. City of Philadelphia, 55 F.3d 886, 895 (3d Cir. 1995) 6

Other Authorities:

Supreme Court Practice 311 (8th ed. 2002) 3

PETITION FOR REHEARING

The Petitioner, Stacy Ann Paterson, (hereinafter referred to as the "Petitioner", respectfully moves this Court for an order 1) vacating its denial of the Petition for Writ of Certiorari entered on October 15, 2007, and 2) granting the Petition. As grounds for this motion, the Petitioner restates the argument made in her Writ for Certiorari as well as provides the following additional argument to meet the criteria to grant a petition for rehearing.

ARGUMENT IN SUPPORT OF PETITION FOR REHEARING

Rule 44 of the Rules of the Supreme Court makes clear that rehearing from a denial of a petition for writ of certiorari shall only be granted in instances in which "intervening circumstances of a substantial or controlling effect" exist or to "other substantial grounds not previously presented." Rule 44.2, Rules of the Supreme Court. This Petition for Rehearing is being timely filed within the twenty-five day period of the order denying certiorari.

As previously stated, petitions for rehearing of an order denying certiorari are generally granted in two instances. In our facts, the Petitioner has met both grounds for rehearing.

A. The Petitioner has alleged an intervening circumstances of a substantial or controlling effect.

The right to petition for rehearing of an order denying certiorari "is not to be deemed an empty formality as though such petitions will as a matter of course be denied. . . . Accordingly, on an appropriate showing that a substantial matter . . . is to be presented, appropriate opportunity should be given for

doing so." *Flynn v. United States, 75 S. Ct. 285, 286 (1955)* (Frankfurter, J., in chambers). Relying on this principle, the Court has not hesitated to postpone reconsideration of orders denying certiorari where deferral advances the interests of justice and judicial efficiency. See United States v. Ohio Power Co., 351 U.S. 980 (1956) ("continu[ing]" petition for rehearing until the following Term); see also United States v. Ohio Power Co., 353 U.S. 98, 99 (1957) (explaining deferral of rehearing petition on ground that "[w]e have consistently ruled that the interest in finality of litigation must yield where the interests of justice would make unfair the strict application of our rules"); Vail Mfg. Co. v. NLRB, 68 S. Ct. 32 (1947) (deferring consideration of petition for rehearing of order denying certiorari).

This Court and courts of appeals have deferred resolution of petitions for rehearing where a decision in pending state court proceedings could alter the analysis. See Stern & Gressman, Supreme Court Practice 311 (8th ed. 2002) (discussing deferral of petitions for certiorari "until an imminent state court decision is rendered on a controlling issue of state law"); Rumsey Indian Rancheria of Wintun Indians v. Wilson, 99 F.3d 321, 322 (9th Cir. 1996); cf. Bakery & Pastry Drivers & Helpers Local 802 v. Wohl, 315 U.S. 769, 773 (1942) (granting petition for rehearing on the ground of an intervening decision from a state court). Similarly, the courts of appeals have deferred consideration of petitions for rehear-

ing in cases where this Court has committed to resolve a potentially determinative legal question. In fact, the courts of appeals even grant petitions for deferral in highly contingent cases where this Court is merely considering whether to grant a petition for certiorari in a case that might present similar legal questions. Barrera-Leyva v. INS, 653 F.2d 379, 380 (9th Cir. 1981); Davis v. Roadway Express, Inc., 621 F.2d 775, 776 (5th Cir. 1980).

Since the crux of the Petitioner's claims involved violations of federal statutes, the Petitioner's complaint was properly filed in the federal courts. Instead of focusing upon the disturbing facts, the District Court and Third Circuit erroneously denied jurisdiction.

The Circuit Courts are divided over the jurisdiction and burden of proof in Title I and Title VII cases. Under the Seventh and Fourth Circuits' standards, the employer may be liable for the actions of the biased supervisor, even when another makes the formal decision, where the biased supervisor influenced the decision by manipulating the decision-making process or by concealing relevant information or feeding false information. Wallace v. SMC Pneumatics, Inc., 103 F.3d 1394, 1400 (7th Cir. 1997). Oleyear v. County of Durham, 336 F.Supp.2d 512, 517-18 (M.D.N.C. 2004) (finding that if the final decisionmaker merely rubber stamps the superior's advice, liability will be imposed on the employer

based on the supervisor's influence); Campbell v. Town of Southern Pines, 2005 U.S. Dist. LEXIS 38488, *27 n.6 (M.D.N.C. 2005) (imputing liability to the employer's two managers' recommendations for termination where no independent investigation was conducted and one of the managers had made statements threatening retaliation).

Obviously as the disparity of the circuits heightened for the necessary burden of proof for a public employee in Title I and Title VII cases, the purpose of direction from the Supreme Court is necessary.

The Petitioner has alleged intervening circumstances of a substantial or controlling effect, that is the burden of proof in discrimination cases.

B. The Petitioner's Writ for Certiorari must be granted for or to "other substantial grounds not previously presented."

The Petitioner was a whistle blower during the course of her employment when she complained that her supervisor sexually harassed her and she was denied training based on her sex and known disabilities. There were no accommodations provided to her due to her disabilities. Due to the pattern of discriminatory behavior, the Petitioner complained and alerted the employer of the unconstitutional prac-

tices. Her speech caused the Petitioner to be wrongfully terminated. During an investigation of the Petitioner's complaint, she was unfairly treated and denied training to perform her duties.

The Petitioner's fundamental rights were violated since she was an employee of the state government. Citizens cannot be deprived of their fundamental rights simply because they work for the government. Connick v. Myers, 461 U.S. 138 (1983). Thus, a State cannot condition public employment on a basis that infringes upon the employee's constitutionally protected freedom of speech. Keyishian v. Board of Regents, 385 U.S. 589 (1967); Perry v. Sindermann, 408 U.S. 593 (1972). Whether an employee's speech is constitutionally protected is determined by a two-part test articulated by this Court in Pickering v. Board of Education, 391 U.S. 563 (1968). The Pickering test asks: (1) whether the speech addresses a matter of public concern, and (2) whether the interest of the employee as a citizen, in commenting on matters of public concern, outweighs the employer's interest in promoting the efficiency of the public services it performs. Pickering, 391 U.S. at 568. Thus, speech is unprotected only if its value -- as measured by the employee's and the public's interests -- is outweighed by the government's interest in effective and efficient provision of services. Watters v. City of Philadelphia, 55 F.3d 886, 895 (3d Cir. 1995).

The First Amendment protects discourse between members of the public on matters of public concern. Connick, 461 U.S. at 138. Speech involves a matter of public concern when it involves an issue of social, political, or other interest to a community. Id. at 146.

Furthermore, the place where the speech occurs is irrelevant. See Rankin v. McPherson, 483 U.S. 378, 388-392 (1987) (holding public employee's discharge violated First Amendment when based on comment by employee as private citizen on a matter of public concern made at work).

The Petitioner was a public employee. Her speech regarding the inappropriate behavior of sexual harassment by her employer, improper training procedures, and non-existent disciplinary process caused her to be wrongfully terminated. The Petitioner was discriminated against by her government employer since she attempted to protect not only herself but female employees.

Two cardinal First Amendment principles animate both the Court's opinion in Tinker v. Des Moines Independent Community School Dist., 393 U.S. 503, 524, 89 S. Ct. 733, 21 L. Ed. 2d 731 (1969) and Justice Harlan's dissent. First, censorship based on the content of speech, particularly censorship that depends on the viewpoint of the speaker, is subject to the most rigorous burden of justification. "**Discrimination** against speech because of its message is presumed to be unconstitutional . . . . When the

government targets not subject matter, but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant. Viewpoint discrimination is thus an egregious form of content discrimination. The government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction." Rosenberger v. Rector and Visitors of Univ. of Va., 515 U.S. 819, 828-829, 115 S. Ct. 2510, 132 L. Ed. 2d 700 (1995) .

Second, punishing someone for advocating illegal conduct is constitutional only when the advocacy is likely to provoke the harm that the government seeks to avoid. See Brandenburg v. Ohio, 395 U.S. 444, 449, 89 S. Ct. 1827, 23 L. Ed. 2d 430 (1969) (distinguishing "mere advocacy" of illegal conduct from "incitement to imminent lawless action"). Tinker v. Des Moines Independent Community School Dist., 393 U.S. 503, 524, 89 S. Ct. 733, 21 L. Ed. 2d 731 (1969); Morse v. Frederick, *127 S. Ct. 2618, 168 L. Ed. 2d 290 (2007).*

The crux of the Petitioner's complaint were violations of federal statutes thereby providing proper jurisdiction to the federal courts. Moreover, her speech to notify the employer and the government of illegal conduct caused her to be wrongfully sanctioned. The Petitioner's complaint was of important public concern, since it established that the Third Circuit courts applied a different burden of

proof upon female government employees than other employees. The Third Circuit courts allowed the government to liberally raise the immunity defense after there was clear and convincing evidence of sexual harassment and discriminatory practices based on sex and disability.

As such, given this additional substantial ground, this Motion must be granted and the merits of the Petition and Motion be addressed by this Court.

CONCLUSION

For the reasons set forth above, as well as those contained in the petition for writ of certiorari, the Petitioner prays that this Honorable Court vacate the order of denial and grant the rehearing of the Writ of Certiorari.

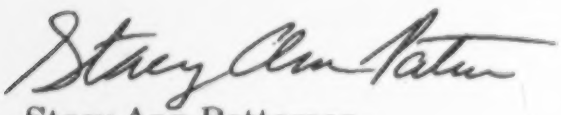
Respectfully submitted,

Stacy Ann Patterson,
The Petitioner
Pro Se

CERTIFICATE OF PETITIONER

The Petitioner certifies that this Petition for Rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 44.2.

Respectfully submitted,



Stacy Ann Patterson,
The Petitioner
Pro Se